

[*O'Sullivan v. Northeast Nuclear Energy Co.*](#), 90-ERA-35 and 36 (Sec'y Dec. 10, 1990)

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U.S. DEPARTMENT OF LABOR
DEPUTY SECRETARY OF LABOR
WASHINGTON, D.C. 20210

DATE: December 10, 1990
CASE NOS. 90-ERA-00035
90-ERA-00036

TIMOTHY O'SULLIVAN,
COMPLAINANT,

v.

NORTHEAST NUCLEAR ENERGY
COMPANY,
RESPONDENT.

BEFORE: THE ACTING SECRETARY OF LABOR¹

**ORDER APPROVING SETTLEMENT
AND DISMISSING CASE**

The Administrative Law Judge (ALJ) in this case² arising under the employee protection provision of the Energy Reorganization Act of 1974, as amended (ERA), 42 U.S.C. §5851 (1982), submitted a Recommended Decision and Order (R.D. and O.) recommending that the complaints be dismissed on the basis of a settlement entered into by the parties. The parties were given an opportunity to file briefs before the Secretary by a briefing schedule issued August 14, 1990. Respondent's counsel wrote a letter to the Secretary on September 18, 1990, stating that

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Respondent supports the R.D. and O. and relies on the arguments made in its Motion to Dismiss with Prejudice of June 25, 1990. complainant did not file any document in response to the briefing schedule.

This matter had been set for hearing by the ALJ on May 24, 1990. At the hearing, both parties represented that a settlement had been reached and would be filed shortly with the

ALJ. Complainant told the ALJ unequivocally "I can state, Your Honor, that I absolutely agree with the settlement as proposed." Transcript of hearing at 3.³ On June 16, 1990, however, Complainant wrote to the ALJ that "[d]ue to . . . harassment, intimidation and ridicule . . . I am unable to sign the agreement as promised" ALJ Exhibit 11.

The ALJ found that Complainant is bound by the settlement because he "knowingly, voluntarily and purposely orally consented to [it]" R.D. and O. at 3. The ALJ relied on the Secretary's decision in *Macktal v. Brown & Root Inc.*, Case No. 86-ERA-23, Sec. Decision November 14, 1989, *appeal docketed*, No. 90-4029 (5th Cir. Jan. 12, 1990), holding that, when consent to a settlement is "'voluntary and knowing' . . . [a] settlement [is] binding, final and conclusive . . . and a party is bound by [it] even though he later realizes the agreement is disadvantageous . . . or he changes his mind." *Id.* at 5 (citations omitted).

The record in this case has been reviewed, and I find that complainant knowingly and voluntarily consented to all the terms of the settlement at the time of the hearing. Settlements need not be reduced to writing to be enforceable, and if a party "who has previously authorized a settlement changes his mind when presented with the settlement documents, that party remains bound by the terms of the agreement." *Fulgence v. J. Ray McDermott & Co.*, 662 F.2d 1207, 1209 (5th Cir. 1981); accord *Brock v. The Scheuner Corp.*, 841 F.2d 151, 154 (6th Cir. 1988). Complainant has not presented any basis for finding that he did not enter into a settlement or that he should be relieved from its terms.⁴ Rather, his argument appears to be that Respondent has violated the terms of the settlement and/or has committed new violations of the ERA. *See* Complainant's Motion to Dismiss Without Prejudice, July 4, 1990. Those allegations may be the basis of a new complaint under the ERA, but are not grounds for

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declaring the settlement void.⁵ The settlement agreement itself has been reviewed, and I find it fair, adequate and reasonable. Accordingly, I adopt the recommendation of the ALJ that the complaints in this case be dismissed with prejudice.

SO ORDERED.

Acting Secretary of Labor Washington, D.C.

[ENDNOTES]

¹There is presently a vacancy in the Office of Secretary of Labor. The Deputy Secretary is authorized to "perform the duties of the Secretary until a successor is appointed. . . . 29 U.S.C. §552 (1988).

²The record indicates that Complainant made separate complaints which were given separate docket numbers but that these complaints have been treated as a single proceeding.

³A more extensive excerpt from this portion of the transcript is set forth in the R.D. and O. at 1 n.1.

⁴ Three versions of the settlement are attached to Respondent's Motion to Dismiss: the Handwritten Agreement of May 24, 1990, entitled "Outline of Points In Settlement Agreement To Be Submitted By NNECO and Tim O'Sullivan in 90ERA-35[sic] and 90ERA- 36[sic]" with Attachments, and the typed version of the same (Exhibit A); and a formal, unsigned Settlement (Exhibit D). Complainant has not asserted that these documents do not accurately reflect the terms of the settlement he referred to at the hearing, or that he did not, at that time, agree to it.

⁵By this order I direct the Office of Administrative Appeals to provide a copy of Complainant's Motion to Dismiss Without Prejudice to the Wage-Hour Administrator for investigation as a separate complaint as appropriate under the ERA and the implementing regulations. 29 C.F.R. Part 24.